

EXHIBIT 101

1 UNITED STATES DISTRICT COURT
2 FOR THE SOUTHERN DISTRICT OF NEW YORK
3 Case No.: 1:21-cv-7955-LAK
and Consolidated Cases 21-cv-7957-LAK
and 21-cv-7959-LAK

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4 MARVEL CHARACTERS, INC.,
5 Plaintiff and Counterclaim-Defendant
6 v.
7 LAWRENCE D. LIEBER,
8 Defendant and Counterclaimant.

-----x

9 MARVEL CHARACTERS, INC.,
10 Plaintiff and Counterclaim-Defendant,
11 v.
12 KEITH A. DETTWILER, in his capacity as
Executor of the Estate of Donald L. Heck,
13
14 Defendant and Counterclaimant.

-----x

15 MARVEL CHARACTERS, INC.,
16 Plaintiff and Counterclaim-Defendant,
17 v.
18 PATRICK S. DITKO, in his capacity as
Administrator of the Estate of Stephen J.
19 Ditko,
20 Defendant and Counterclaimant.

-----x

21
22 VIDEO DEPOSITION OF ROY WILLIAM THOMAS, JR.
23 January 20, 2023
24 8:49 a.m.
25 Charlotte, North Carolina

1 ROY WILLIAM THOMAS, JR., pursuant to Federal Rule of
2 Civil Procedure 30, held at the offices of Nelson Mullins
3 Riley & Scarborough in the Foster Conference Room A, located
4 at 301 South College Street, One Wells Fargo Center, 23rd
5 Floor, Charlotte, North Carolina 28202, before
6 Audra Smith, a realtime court reporter and
7 a Notary Public of the State of North Carolina.

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ALSO PRESENT:

DAVID COOPER, Videographer

ELI BARD, Marvel Entertainment, (Via Zoom)

Alec Lipkind, The Walt Disney Company, (Via Zoom)

1 little thing he did once, and actually crossing out
2 a panel or two on the original art, which made the
3 Art Director John Verpoorten look at me in horror
4 because I didn't usually do that because I had so
5 much respect for him. But that was an exception.
6 Gene's work was so good and the things that he did,
7 if he didn't do it right the first time, he wasn't
8 going to be able to improve it, you know, by doing
9 something else and no one else was going to, so you
10 just accepted it was just a page. There may have
11 been occasional things.

12 Martin Goodman either rejected or at
13 least expressed extreme displeasure at one of his
14 covers, a Doctor Strange. Sent back a message, "I
15 don't know what the hell's going on in this cover,"
16 and he was kind of right.

17 Q Other than those two examples, the one
18 panel or two that you crossed out and the one cover
19 that may or may not have been rejected by Martin
20 Goodman, do you have any recollection of Gene
21 Colan's other artwork for Marvel during the relevant
22 period being rejected?

23 A He probably had -- you know, all artists
24 would have some page they had to redo over from time
25 to time, but it would not have been exceptional with

1 Gene.

2 Q And if Marvel had to keep rejecting or
3 sending back pages to artists, would that artist,
4 based on your experience, continue to get regular
5 assignments from Marvel?

6 A Probably not, if you had to do it too
7 much. The person with our deadlines and so forth
8 would just have been too much trouble. By the time
9 they got to the status that Gene was at, you know,
10 you knew their work, and we'd have an occasional
11 problem with the writing or the order with any book,
12 but you basically knew what you were going to get
13 from Gene, except for an occasional drawing or an
14 occasional page.

15 And I worked with him, as I said, for a
16 year or more on Daredevil, and I don't have --
17 except for this one panel or something I crossed out
18 and might have had him or somebody else redo, I have
19 no memory of ever, you know, rejecting or trying to
20 get Stan to reject, you know, a page of his. There
21 may have been one or two, but it wasn't very much.

22 Q Okay. And you say that you worked with
23 Gene Colan for a year on Daredevil. What year was
24 that?

25 A I'm not sure. It was at --

1 Q Okay. And so let's say even before the
2 expansion in the early '70s when Marvel was doing
3 eight or so superhero comics, how many -- do you
4 have an understanding of approximately how many
5 pages, for example, a regular artist like Gene Colan
6 might be doing per month?

7 A Different artists had considerably
8 different rates because of the amount they could
9 pencil. Gene -- I understood, both by comics, to be
10 fairly fast and probably working long hours, it -- I
11 got the impression that on the days he worked, he
12 would do a couple pages, maybe three. He was one of
13 the -- considered one of the faster and more
14 productive artists.

15 Q Okay. Let's go ahead and look back at
16 Exhibit 62, which we've already looked at. And if
17 we turn to page -- the last three digits are 306.

18 A Yes, I have it here.

19 Q You're there. Okay great.

20 And do you see there where you're
21 discussing how Gene often -- Gene Colan often ran
22 out of room; do you see that?

23 A Yes. It's probably an exaggeration to
24 say "often," but he did have that problem from time
25 to time, yes.

1 Q And what do you mean by that? Can you
2 explain?

3 A Yes. Stan did a plot, whether it was at
4 the beginning, being written still when I first came
5 there, and later mostly over the phone that Gene
6 would record. But he would -- they would -- he
7 would discuss the points, and they'd go back and
8 forth, and mostly Stan would plot it. But they
9 would talk it over, and then he'd -- so then Gene
10 had something to write [sic]. And in the beginning,
11 as I said, it was -- I mean "to draw," in the
12 beginning it was all written out.

13 But the problem was that Gene had a
14 tendency to start working on stories without
15 bothering to read the whole plot so that -- and he
16 liked drawing big panels, and he like to express --
17 and he had so much fun doing it and he had his own
18 particular style that, on several occasions, he
19 would suddenly get to a certain point, and Stan
20 would see the early pages. I remember one
21 conversation over the phone, I was in the room at
22 the time, and Stan said, "Gene," he said, you know,
23 "I can see these pages, and they're great," but he
24 said, you know, "you got a big panel of a whole-page
25 drawing of Spider-Man -- I mean of Iron Man and this

1 and that." He said, "You're going to run out of
2 room. What about this stuff that comes in the last,
3 you know, half of the story, and you only have four,
4 five, six pages left of the 12 pages?"

5 And Gene said, "Well, I haven't read that
6 far yet. You know, I hadn't got that far in the
7 plot." He was obviously drawing it without reading
8 the whole story.

9 As a result, that story had to suddenly
10 crowd a whole scene with a rocket and the explosion
11 and all sorts of thing into a page or two that
12 really needed several times that length.

13 And in that case, Stan did it because he
14 could kind of make it work, but he was kind of, you
15 know, unhappy with the pacing. But he gave Gene a
16 lot of room because the readers liked it, Stan loved
17 his work, and in general, you just kept trying to
18 get him to pay a little more attention to the
19 pacing.

20 Q Okay. Let's go ahead and mark as 75,
21 Tales of Suspense Volume 1, Number 86.

22 (Exhibit Number 75, Comic: Tales of
23 Suspense Featuring Iron Man and Captain
24 America, Volume 1, Number 86, no Bates, was
25 identified.)

1 it would refer to the pencil artist as kind of a
2 sloppier, shorthand usage because that was the
3 primary artist, but it really meant "the penciler,"
4 generally speaking.

5 Q And --

6 A We would say the artist, as opposed to
7 the inker, but that wasn't -- that was just
8 imprecise terminology is what we did.

9 Q And once the pencil artist finished
10 drawing out the plot, what was the next step in the
11 process?

12 A For him to get it into the office, or to
13 the writer by whatever method we were doing.

14 Q And what happened at that point?

15 A The writer took it and wrote the dialogue
16 and the captions and indicated the balloons on
17 the -- at that time, on the original art as well.

18 Q And what if the writer on the comic was
19 not Stan Lee, was Stan Lee involved at all at this
20 stage?

21 A Yes. His -- he was the editor. His name
22 was always on there as editor, or later, you know,
23 "Presents..." or something, but it always indicated
24 he was the editor. He was always the ultimate
25 authority unless Martin Goodman stepped in, and that

1 was mostly on covers.

2 Q And other than having his name actually
3 listed as the editor on the comics, would Stan Lee,
4 for example, review the artwork when it came in?

5 A Yes. Stan really liked to review the --
6 he really liked to look at the artwork, even if he
7 wasn't going to write the comic. At first he felt
8 he should. That was his duty. He wanted to make
9 sure. He didn't have faith -- total faith in me or
10 anybody else. And -- so he would review all of it.
11 There might be something that got slipped by him
12 once in a while, but that was -- but in general,
13 that was his practice, yes.

14 Q And what was your understanding of why
15 Stan Lee reviewed the artwork?

16 A Well, he was the editor, so it was his
17 job to supervise. If something went wrong, the
18 publisher wasn't going to blame -- go to the artist,
19 he was going to go to Stan Lee, not me or his
20 artist.

21 And secondly, he felt that, you know,
22 he -- that both over the years, and in particular in
23 recent years since Marvel got started, he felt he
24 had a particular expertise, you know, over -- you
25 know, over knowing what the book should look like

1 A Yes. Yes. Including that, now it's
2 five.

3 Q Including today it's five, yes.
4 Approximately over how many years did
5 those five depositions occur?

6 A Well, 35 or 40. Because the first one
7 was in -- sometime in the early -- middle '80s in
8 Los Angeles. So it's at least 35, 40 years.

9 Q Okay. And Mr. Toberoff also asked you a
10 number of questions suggesting or inquiring whether
11 Marvel is in any way compensating you for your
12 testimony today. Do you recall that?

13 MR. TOBEROFF: Object to form.

14 A Yes.

15 BY MS. LENS:

16 Q And, Mr. Thomas, has any work that you've
17 done for Marvel over the years been tied in any way
18 to testimony that you may have provided in any
19 litigation?

20 MR. TOBEROFF: Object to form.

21 A Not even the slightest, you know, hint.

22 BY MS. LENS:

23 Q And Mr. Toberoff also asked you about the
24 incentive payments that you testified that Marvel
25 provides to you on a discretionary basis. Do you

1 recall that?

2 A Yes.

3 Q Okay. And do those incentive payments,
4 to your understanding, have any connection to either
5 this lawsuit or any of the testimony that you've
6 previously provided during depositions?

7 MR. TOBEROFF: Object to the form.

8 A No. They've been going on for the last
9 maybe three decades or so as Marvel's republishing.
10 And it's always been kind of, you know, steady
11 depending upon what they publish. It has nothing to
12 do with anything I do, whether I'm writing for the
13 company or not writing for the company or doing
14 whatever.

15 BY MS. LENS:

16 Q And to your understanding, your -- well,
17 strike that.

18 Let's talk about the character agreement
19 that Mr. Toberoff asked you about. To your
20 understanding, is that character agreement related
21 in any way to testimony that you may provide in any
22 litigations involving Marvel?

23 A No. It has no connection to anything
24 other than work that I did for the company over the
25 last few decades since '65.

1 Q Mr. Thomas, do you have any reason to
2 believe that the system or method for creating
3 comics at Marvel in the 1960s, prior to you joining
4 in 1965, differed from that in place when you joined
5 in '65?

6 MR. TOBEROFF: Objection as to form.
7 Calls for speculation.

8 A Well, you know, I could tell from
9 conversations with Stan, with Sol, with various
10 artists at various times that it had evolved
11 somewhat obviously from the early '60s. Certainly
12 by the time I was there in '65, it had pretty much
13 come into its basic form, and I just -- you know, I
14 just kind of worked with it and inherited the form
15 as it already existed.

16 BY MS. LENS:

17 Q Did anyone tell you, when you joined in
18 1965, that the system for creating comics was new or
19 different from that used in, say, 1962, '63, and
20 '64?

21 MR. TOBEROFF: Objection as to form.
22 Compound.

23 A I never got any indication that it was
24 different. It was still the same -- mostly the same
25 people, even.

1 BY MS. LENS:

2 Q So no one told you, for example, that in
3 1962 freelance writers weren't working under the
4 supervision of Stan Lee?

5 MR. TOBEROFF: Leading. Objection as to
6 form.

7 BY MS. LENS:

8 Q Let me restate that.
9 Did anyone tell you, when you joined
10 Marvel in 1965, that previously in the 1960s that
11 freelance writers weren't working under the --
12 freelance artists weren't working under the
13 supervision of Stan Lee?

14 MR. TOBEROFF: Objection as to form.
15 Leading. Compound.

16 A No one told me that there had been, you
17 know, any changes. And Stan had been the editor
18 during that entire period. The artists and other
19 writers, if there had been any, they all reported to
20 Stan. And it seemed like that had been the way it
21 had been for at least the last several years.

22 BY MS. LENS:

23 Q Did anyone tell you, when you joined
24 Marvel in 1965, that freelancers didn't work on a
25 per-page rate in the 1960s before you joined?

1 MR. TOBEROFF: Objection as to form.

2 A As far as I knew or was informed, it had
3 always been a paid -- a page rate kind of system for
4 writers and for artists.

5 BY MS. LENS:

6 Q And did anyone tell you before -- strike
7 that.

8 Did anyone tell you, when you joined
9 Marvel in 1965, that prior to that, that freelance
10 artists didn't work pursuant to deadlines provided
11 by Marvel?

12 MR. TOBEROFF: Objection as to form.

13 A No. No, they didn't. Obviously there
14 always had to be deadlines. There were deadlines
15 all the way back to the '30s and the '40s, and that
16 part of it really had never changed.

17 BY MS. LENS:

18 Q Did anyone tell you, when you joined
19 Marvel in 1965, that prior to that, that Marvel
20 didn't have the right to require freelancers to do
21 revisions at Marvel's request?

22 MR. TOBEROFF: Objection as to form.

23 Vague.

24 A No, no one ever told me that.

25

1 BY MS. LENS:

2 Q Do you have any reason to believe that
3 that was the case?

4 MR. TOBEROFF: Same objection.

5 A No. Quite the contrary.

6 MS. LENS: Okay. No further questions.
7 Of course if Mr. Toberoff asks any questions in
8 his remaining minute, I'll reserve the balance
9 of my time for redirect.

10 MR. TOBEROFF: I'm starting my stopwatch
11 over.

12 FURTHER EXAMINATION

13 BY MR. TOBEROFF:

14 Q When Stan had meetings with freelance
15 writers and artists during the period, were you
16 generally in those meetings?

17 MS. LENS: Objection to form.

18 A I wouldn't say generally but sometimes.

19 BY MR. TOBEROFF:

20 Q What percentage of the times?

21 MS. LENS: Objection. Lacks foundation.

22 A Just a few percent. Five, ten. Rather
23 small numbers. There would usually be some
24 particular reason why he wanted me there, to take
25 notes or whatever.

I N D E X

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185/8	Question by Toberoff: Did you ask Marvel's attorneys to represent you in this case?
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188/14	Question by Toberoff: Did Marvel's attorneys tell you why they were suggesting that they represent you?
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190/2	Question by Toberoff: And what did they tell you?
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218/13	Question by Toberoff: What was -- at that meeting, what was said to you by Marvel's attorneys?
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1 STATE OF NORTH CAROLINA)

2 COUNTY OF FORSYTH)

3 REPORTER'S CERTIFICATE

4 I, Audra Smith in and for the above county
5 and state, certify that the person hereinbefore named was
6 taken before me at the time and place and was sworn by me and
7 that such deposition is a true record of the testimony given
8 by such witness.

9 I further certify that I am not related to
10 any of the parties to this action by blood or marriage and
11 that I am in no way interested in the outcome of this matter.

12 IN WITNESS WHEREOF, I have hereto set my
13 hand this 6th day of February, 2023.

14
15 

16 _____
17 Audra Smith

18 Notary Number: 201329000033

19 Commission Expires: June 26, 2025
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